PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ASSAULT AND BATTERY.

Retaking Possession of Property

With one judge dissenting the Supreme Court of Vermon decides in *Stanly* v. *Payne,* 62, Atl., 495, that where defendant, on the expiration of his lease of a farm, obtained the landlord's permission to leave a certain box in the barn, and thereafter defendant visited the farm and told the then tenant that the box was his and that he intended to take it, it was not sufficient to place the tenant in the attitude of a wrongdoer and justify defendant in the use of force and violence to get possession of his box. With this case compare *Kirby* v. *Foster,* 17 R. I. 437, 14 L. R. A. 317.

ATTORNEY AND CLIENT.

Substitution of Attorneys

In *Silverman* v. *Pennsylvania R. Co.,* 141 Fed. 382, the United States Circuit Court, S. D., New York, holds that a party has an absolute right to change his attorney at any time, and while the court may, in its discretion, compel him to pay for services rendered as a condition of substitution, it will not do so where the case was taken on a contract for a contingent fee which is of doubtful validity, but will order the substitution and leave the attorney to his remedy by suit. See in connection herewith editorial note to 69 C. C. A., 113.

BANKRUPTCY.

Scheme to Defeat Proceedings

The United States District Court of Arkansas, E. D., decides *In re Blount,* 142 Fed. 163, that an insolvent having more than twelve creditors cannot defeat bankruptcy proceedings against him by transferring his property for the benefit of some of his creditors leaving less than three unprovided for, but leaving the

preferred creditors actually unpaid for the purpose of requiring them to be counted so that those remaining will be insufficient in number to maintain a petition in bankruptcy. Compare *Leighton* v. *Kennedy,* 129 Fed. 737.

Imprisonment for Debt

In *Samuel* v. *Dodd,* 142 Fed. 68, the United States Circuit Court of Appeals, Fifth Circuit, decides that an order requiring a bankrupt to pay over money or surrender preperty forming part of his estate is not one for the payment of a debt, and his commitment for refusing to obey such an order is not an imprisonment for debt.

Act of Bankruptcy

The United States District Court, E. D. Pennsylvania, decides *In re Weiss,* 142 Fed. 279, that the failure of an insolvent debtor to discharge the preference obtained by a judgment creditor by the levy of an execution cannot be charged as an act of bankruptcy, where the levy was procured by the attorney for the petitioning creditors for the sole purpose of laying the foundation for the bankruptcy proceedings. Compare *Simonson* v. *Sinsheimer,* 95 Fed 948.

Partnership

In *Dickas* v. *Barnes,* 140 Fed., 849, the United States Circuit Court of Appeals, Sixth Circuit, dicides that a court of bankruptcy, which is administering the estate of a bankrupt partnership, has jurisdiction, as incidental thereto, to take possession of the property of a partner, although he has not been and could not be adjudged a bankrupt individually, and to administer the same as far as necessary to a settlement of the partnership estate.

Sales of Property

The United States Circuit Court of Appeals, Fourth Circuit, decides in *Sturgiss* v. *Corbin,* 141 Fed., 1, that a court of bankruptcy has power to order the sale of any property of a bankrupt clear of incumbrances, and also, in its discretion, to appoint commissioners to make the sale; there being no requirement that such sales shall be made by the trustee.

BILLS AND NOTES.

Payment

In *Interstate Nat. Bank* v. *Ringo,* 83 Pac., 119, it appeared that a bank holding a note for collection delivered it to an endorser on the day of maturity, in exchange for the indorser's cheque upon another bank, and after inquiring by telephone of the drawee bank about the cheque, and being told through a mistake as to what cheque was meant that it would be paid, entered the amount to the credit of the owner of the note. On the next day, payment of the cheque, which at no time was good, was refused for want of funds, and the collecting bank delivered it to the drawer and in return received the note of its principal. Under these facts the Supreme Court of Kansas decides that the transactions did not effect the payment of the note. Compare *Cheltenham Stone &c Co.* v. *Gates Iron Works* 124 Ill., 623.

CARRIERS.

Messenger Company

The Supreme Judicial Court of Massachusetts decides in *Haskell* v. *Boston District Messenger Co.,* 76 N. E., 215, that where a bill for rent was intrusted to a messenger furnished by a messenger company and the amount collected by the messenger, the company did not become a common carrier and insurer of the bill and the money. The knowledge, it is said, of a messenger company that messengers sent out by it were sometimes employed to carry money does not render the company a common carrier where the company exercises no control over the messenger during his employment by a patron. Compare *Linnehan* v. *Rollins,* 137 Mass., 123.

Misconduct of Servants

The rule that a carrier owes to a passenger the duty of exercising care to protect him from injury or insult is well established and has been applied as establishing absolute liability where the employee of the carrier on the train whereon the passenger is riding, injures him. It is extended in *Hayne* v. *Union St. Ry. Co.,* 76 N.E., 219 to a case where the injury is inflicted by an employee of the carrier belonging to a different crew from that of the train on which the passenger was riding. The facts in the case were that the conductor of one of defendant's cars

CARRIERS (Continued).

in sport threw a dead hen at the motorman of the car on which plaintiff was riding. The hen missed the motorman, struck the window of the car near where plaintiff was sitting and injured her. Compare *Bryant* v. *Rich,* 106 Mass., 180.

Discrimination: Routing by Initial Carriers

In *Southern Pacific Co.* v. *Interstate Commerce Commission,* 26 S. C. R., 330, the United States Supreme Court decides that a discrimination forbidden by the Interstate Commerce Act of 1887, is not made by the adoption by common carriers, as part of an agreement for a through rate from California to the East, for oranges and other citrus fruits, of a rule under which the right of routing beyond its own terminal is reserved to the initial carrier as the condition of guaranteeing the through rates to the shipper, where such rule has served, as was intended, to break up rebating by the connecting lines, and, in its practical operation, the actual routing is generally conceded to the shipper and his requests to divert shipments *en route* are usually allowed.

CONSTITUTIONAL LAW.

Equal Protection of the Laws

The United States Circuit Court of Appeals, Eighth Circuit, decides in *Williamson* v. *Liverpool & London Globe Ins. Co.,* 141 Fed., 54, that a state statute providing that "in any action against any insurance company to recover the amount of any loss under a policy of fire, life, marine or other insurance, if it appear from the evidence that such company has vexatiously refused to pay such loss the court or jury may . . . . allow the plaintiff damages not exceeding ten per cent. on the amount of the loss, and a reasonable attorney's fee," is not void as in violation of the equality clause of the Fourteenth Amendment to the Federal Constitution. Compare herewith *Gulf &c. Ry. Co.* v. *Ellis,* 165 U. S., 150.

Interstate Commerce

In *Houston & Texas Central Railroad Company* v. *John A. Mayes,* 26 S. C. R., 491, the United States Supreme Court decides that, as applied to interstate shipments, a provision of the Texas statutes which penalizes the failure of a railway company to furnish cars to

CONSTITUTIONAL LAW (Continued).

a shipper, within a certain number of days after the latter's requisition in writing, in the sum of $25 per day for each car not so furnished, and admits of no excuse except such as arises from "strikes or other public calamity," is an unconstitutional regulation of interstate commerce. Compare *Wisconsin &c. R. Co.* v. *Jacobson,* 179 U. S., 287.

Ticket Brokerage

In *In re O'Neill,* 83 Pac., 104, the Supreme Court of Washington decides that an act which prohibits any one but a duly authorized agent of a railroad to sell railway transportation; requires such agent to be provided with a certificate from the railroad showing his authority, and to have a fixed place of business in which his certificate shall be conspicuously shown; makes it unlawful for any one not possessed of such certificate to sell railroad transportation or to set up, establish, and conduct any office or place of business for the sale or transfer of railroad transportation, does not as to a ticket broker established in business previous to its passage violate the Fourteenth Amendment to the Federal Constitution guaranteeing due process of law, but is a valid exercise of the police power in the prevention of the perpetration of possible frauds on the public by the unauthorized sale of railroad tickets. Compare *Ex Parte Lorenzen,* 128 Cal., 431; 50 L. R. A., 55.

CONVICTS.

Contracts for Labor

In *Henry* v. *State,* 39 Southern, 856, the Supreme Court of Mississippi decides that a contract whereby the board of control of the penitentiary agreed to work a plantation with convicts, and to receive a certain sum from the owner, who was to receive the crops, the convicts to remain under the supervision and control of the board, was a lease of the land, and not a hiring of the convicts to the owner. One judge dissents. The case is a very elaborate and thorough review and discussion of the question involved. It is well worthy of careful study.

CORPORATIONS.

In *Mandeville* v. *Courtright,* 142 Fed., 97, it appeared that defendants, all of whom were stockholders and officers of a company incorporated in New Jersey, caused to be conducted in the State of Pennsylvania, in the name of the corporation, the business of dentistry which the corporation had no charter right to carry on there, and which was in violation of a law of the state. Plaintiff, in ignorance of the existence of such a corporation, and supposing that she was in the hands of licensed dentists, submitted to an operation by an authorized employee of the establishment, who performed the work so negligently as to fracture plaintiff's jaw-bone and cause her serious injury. Under these facts the United States Circuit Court of Appeals, Third Circuit, decides that defendants could not avoid personal liability for the injury by setting up the charter of the company, but that, each having knowingly and actively participated in conducting the business in violation of law, they were liable as partners for all acts done in connection therewith. Compare *Guckert* v. *Hacke,* 159 Pa., 303.

Conducting an Illegal Business

The Court of Errors and Appeals of New Jersey decides in *O'Connor* v. *International Silver Co.,* 62 Atl., 408, that where a corporation A has acquired all the capital stock of corporation B, and at the time of such acquisition corporation B owned and held a large number of the shares of the capital stock of corporation A, the officers and directors of neither corporation have the right at a stockholders' meeting of corporation A, held for purpose of electing directors of that corporation, to vote upon the shares of the stock of corporation A held by corporation B at the time of the acquisition of its stock by corporation A.

Action by Stockholder

The general rule that a corporation cannot enter into a valid contract of guaranty is of course in the ordinary cases well settled. A modification of this principle appears in *Whitehead* v. *American Lamp & Brass Co.,* 62 Atl., 554, where the Court of Chancery of New Jersey decides that where defendant corporation, engaged in a manufacturing business, agreed to

Guaranty: Ultra Vires

CORPORATIONS (Continued).

guaranty the indebtedness of a third person for materials to be used in the manufacture of goods for such corporation, which could not have been obtained but for such guaranty, it was estopped, after obtaining the benefit thereof, to deny its liability on the ground that the contract was *ultra vires*. Compare *Holmes* v. *Willard,* 125 N. Y., 75, 11 L. R. A., 170; and the very recent decision *In re New York Car Wheel Works,* 141 Fed., 430.

Jurisdictional Amount

In *Denver City Tramway Co.* v. *Norton,* 141 Fed. 599 the United States Circuit Court of Appeals, Eighth Circuit, decides that under the Judiciary Act the amount in dispute or matter in controversey determining the jurisdiction of the court, is the amount demanded in the petition in good faith, and not the amount ultimately recovered. See also notes to *Auer* v. *Lembard,* 19 C. C. A. 75 and to *Tennent-Stribling Shoe Co.,* v. *Roper,* 36 C. C. A. 459.

DEAD BODIES.

Mutilation

The New York Supreme Court (Appellate Division, First Department) decides in *Jackson* v. *Savage,* 96 N. Y. Supp., 366, that a husband has a right of action for the dissection of the body of his deceased wife without his permission, or without the permission of the wife given during her life-time. Compare *Foley,* v. *Phelps,* 37 N. Y. Supp., 471.

EQUITY.

Jurisdiction : Specific Performance

The United States Circuit Court of Appeals, Seventh Circuit, decides in *Grand Trunk W. Ry. Co.* v. *Chicago & E. I. R. Co.,* 141 Fed. 785, that a contract by a lessee railroad company to run its trains over the tracks and use terminal facilities of the lessor during the term of a lease for 999 years and pay rental on a wheelage basis, if clearly established and valid, is specifically enforceable in equity on the ground of the avoidance of a multiplicity of suits, which would be vexatious and expensive and in which the relief obtainable would be inadequate. See also *Penna. R. R. Co.,* v. *St. Louis &c. Ry. Co.,* 118 U. S. 290.

FRAUD.

False Representations: Damages

The United States Circuit Court of Appeals, Fourth Circuit decides in *Kell* v. *Trencherd,* 142 Fed., 16, that the measure of damages recoverable in an action for fraud and deceit, based upon a sale induced by false representations made by the seller, is the difference between the actual value of what the purchaser parted with and the actual value of what he received. The damages may also include outlays legitimately attributable to the fraud.

HABEAS CORPUS.

Nature of Restraint

It is decided by the United States Circuit Court of Appeals, Seventh Circuit, in *Mackenzie* v. *Barrett,* 141 Fed. 964, that one under arrest, but at large on bail, is entitled to a writ of *habeas corpus,* the same as if the arrest was accompanied by actual imprisonment, the purpose of the writ being to test the right of the court or other body issuing the process to detain the person for any purpose by restraining him of his right to go without question. Compare *Ex parte Balz,* 177 U. S. 389.

INJUNCTION.

Supply of Electricity

In *Beck* v. *Indianapolis Light & Power Co.,* 76 N. E., 312, the Appellate Court of Indiana, Division No. 2, decides that where a contract to purchase electric current for a period of five years provided that, in consideration of the rate fixed, the consumer should not use any electric current on the premises not furnished by complainant, complainant was entitled to an injunction to restrain the consumer from so using current furnished by others, though the contract was not one that a court of equity could compel defendant to specifically perform. Compare *Philadelphia Ball Club* v. *Lajoie,* 202, Pa. 210.

INSURANCE.

Incontestability

In *Reagan* v. *Union Mut. Life Ins. Co.*, 76 N. E., 217, the Supreme Judicial Court of Massachusetts decides that a provision in a life policy making it incontestable for fraud from the date of the policy is invalid and the insurer, in an action on the policy, may rely on fraudulent representations prior to the issuance of the policy, notwithstanding that by the terms of the policy the entire contract is contained in it and the application; holding, however, that a provision in a life policy, making it incontestable for fraud after the expiration of a specified time, is valid and binding on the insurer. See also *Wright* v. *Mut. Benefit Life Ass'n.*, 118 N. Y., 237.

JUDGMENTS.

Full Faith and Credit

The public press has already given considerable notice to the decision of the United States Supreme Court in *Haddock* v. *Haddock*, 26 S. C. R., 525, with reference to the recognition which must be given in one state to a divorce decree by the courts of another. The principle established by the case by a majority of five judges to four is that the mere domicil within the state of one party to the marriage, where such domicil is not the matrimonial domicil, does not give the courts of that state jurisdiction to render a decree of divorce enforceable in all the other states by virtue of the full faith and credit clause of the Federal Constitution against a non-resident who did not appear and was only constructively served with notice of the pendency of the action. It is of course impossible to give any adequate idea of the decision in this department of the LAW REGISTER. The prevailing opinion, written by Mr. Justice White, apart from its value as a precedent on the facts before the court, is a most excellent review and summary of the principles which have been established by the prior adjudications of the court with reference to divorce. Compare *Atherton* v. *Atherton*, 181 U. S. 155.

LIMITATION OF ACTIONS.

In *Lamberida* v. *Barnum,* 90 S. W., 698, the Court of Civil Appeals of Texas decides that where a right of action to recover certain real estate accrued to a married woman during coverture, and she died while the right of action existed, leaving minor heirs, such heirs could not set up their disability of infancy as an excuse for not having brought their action within the time limited by the statute. Compare *Chevallier* v. *Durst,* 6 Tex., 239.

Tacking Disabilities

NEGLIGENCE.

In *McMahen* v. *White,* 30 Pa. Super. Ct., 169, it is decided that where an owner of a vehicle accompanied by a guest, both being on a pleasure trip, permits the guest to drive at the latter's request, and is in a position to take control of the reins at any moment, the owner will be liable for an injury caused by a negligent act of the guest in driving the vehicle. Compare *Carlisle* v. *Brisbane,* 113 Pa., 544.

Permitting Guests to Drive

PARTNERSHIP.

The New York, Greene County, Court decides in *In re Hallock,* 96 N. Y. Supp., 105, that a note of one partner endorsed by his copartner is not a firm debt, and on a general assignment of the firm property and the estate of the individual partners for the benefit of creditors, the note cannot be allowed against the firm assets until payment of the claims against the firm. With this decision compare *Citizens' Bank* v. *Williams,* 128 N. Y., 77.

Insolvency

PUBLIC SCHOOLS.

In *O'Connor* v. *Hendrick,* 96 N. Y. Supp., 161, it appeared that a teacher in a public school wore the garb of a Catholic religious order to which she belonged. Immediately before the regular time for opening the school, and at the close of the morning and afternoon sessions, she said the prayers of the Catholic Church. The Catholic children were required to be present at the prayers, while non-Catholic children were allowed to be absent. Under

Religious Instruction

PUBLIC SCHOOLS (Continued).

these facts the New York Supreme Court decides that such acts constitute religious teachings, within a constitutional prohibition against the state or any subdivision thereof giving aid to any school under the control of any religious denomination. In accordance with this decision it is held that a contract for the employment of a teacher in a public school bound by her vows to wear the garb of a Catholic religious order to which she belongs, entered into in disobedience of the orders of the state superintendent, is invalid and non-enforceable. The case presents a very careful consideration of the delicate issue involved.

RAILROADS.

The Supreme Court of Pennsylvania decides in *Prethrow* v. *West Jersey & Seashore Railroad Company,* 21 Pa., 112, that where a railroad company sells a single ticket for a whole journey which is to be made partly by railroad and partly by ferry, and there is nothing on the face of the ticket to indicate that any part of the transportation is to be by means of another carrier, the ticket imports *prima facie* that the railroad company owns the ferry, and a passenger suing the railroad company for an injury occurring on the ferry is not bound to produce evidence that the railroad company owned or operated the ferry.

Tickets

RELEASE.

The Supreme Court of Vermont decides in *Belheumer* v. *Thomas,* 62 Atl., 719, that where plaintiff's attorney fradulently procured from plaintiff a release of the cause of action and delivered the same to the defendant on the payment of a sum of money by defendant, who accepted the release in good faith, believing that it was properly obtained from plaintiff, and the attorney appropriated the money to his own use, the release was a bar, although plaintiff was guilty of no negligence in relying on the representations of her attorney and in signing the same. Compare *Goodman* v. *Eastman,* 4 N. H., 455.

Validity: Fraud

SEALS.

In *Fourth Nat. Bank of St. Louis, Mo.* v. *Camden Lumber Co.,* 142 Fed.257, the United States Circuit Court, W. D. Arkansas, decides that the omission of a seal from a mortgage made by a business corporation is not fatal to its validity in equity in Arkansas, there being no statutory provision in that state requiring the use of a seal by such corporations, and there being a provision in the Constitution abolishing the distinction between sealed and unsealed instruments made by individuals. The underlying principle is of considerable importance. Compare *Skeene* v. *Allis,* 45 Fed. 149.

Corporate Seals

STATUTE OF FRAUDS.

The Court of Appeals of Maryland decides in *Oldenburg & Kelly* v. *Dorsey,* 62 Atl., 576, that where a materialman, on being applied to by a contractor for materials for a building, went to the owners and asked that they give the order for the materials, whereupon one of them told the materialman to deliver the materials and they would pay for them, that they would pay for everything that went into the buildings, and for the materialman to charge the materials to the contractor and hold him, as well as the owners, their contract was an original promise and was not within the statute of frauds. See however, *Landis* v. *Royer,* 59 Pa., 95.

Original or Collateral Promise

TAXATION.

In *Mattern* v. *Canevin,* 213 Pa., 588, the Supreme Court of Pennsylvania applying the settled rule that taxation of property held for religious or charitable purposes will not be presumed, decides that a mortgage taken to secure the purchase money of a church building and held for religious and charitable purposes is not subject to a general personal property tax upon money at interest.

Charities

TAXATION (Continued).

Numerous cases have arisen under the Taxation Laws of Louisiana, depending for their determination upon the legal situs of the personal property sought to be taxed. A new decision, and one going perhaps further than any of its predecessors, appears in *Metropolitan Life Ins. Co. of New York* v. *Board of Assessors &c.,* 39 Southern, 846, where it is held that the particular manner or instrumentality by which the moneys used by the foreign corporation in Louisiana in the course of its business are obtained is a matter of no significance in the consideration of the liability of the company to taxation for the use of such money. The moneys loaned in Louisana were the company's moneys, and the notes evidencing the loan represented the moneys so used in Louisana. The moment the moneys were received in Louisana the taxing power attached as against the company, and the tax created was not destroyed because thereafter the company might remove the notes beyond the limits of the state. Compare *Comtoir National* v. *Board,* 52 La. Ann., 1322; and *Blackstone* v. *Miller,* 188 U. S., 206.

Situs of Personalty

A point of very practical importance is decided by the Supreme Court of Pennsylvania in *Philadelphia* v. *Pennsylvania Company &c.,* 214 Pa., 138, where it is held that a defense to a scire facias on a tax lien, which alleges that after the liability for tax became fixed for the year the property was devoted to a use which exempted it from taxation, is not available. Compare *Murray* v. *Taylor,* 147 Pa., 481.

Exemption Portion of Year

TELEGRAPH COMPANIES.

In *Western Union Telegraph Co.* v. *Schriver,* 141 Fed., 538, the United States Circuit Court of Appeals, Eighth Circuit, decides that a telegraph company owes no duty to the undisclosed principal of the addressee of a telegram to exercise reasonable care to receive and transmit authorized messages only, because injury to him cannot be reasonably anticipated as the consequence of the lack of such care, and because such injury is the effect of an independent intervening cause,—the act of the addressee. Compare *McCormick* v. *Western Union Telegraph Co.,* 79 Fed., 449, 38 L. R. A. 684.

Undisclosed Principal of Addressee

TRUSTS.

In *Wright et al.* v. *Leupp et al.*, 62 Alt., 464, the Court of Chancery of New Jersy decides that a provision of a spendthrift trust, requiring the trustee to hold the principal and income of the fund free from all claims of creditors and providing that the beneficiary shall have no power to anticipate, charge or incumber the principal fund or the income, does not preclude the beneficiary from assigning to his wife a half interest in the income of the fund, as it may accrue and become payable, for her support and that of her minor children.

Spendthrift Trusts

WILLS.

With regard to the burden of proof in establishing undue influence, the Supreme Court of Missouri, Division No. 1, decides in *King et al.*, v. *Gilson et al.*, 90 S. W., 367, that notwithstanding testatrix was under guardianship as a person of unsound mind at the time of the execution of an alleged will, the burden was on those who asserted that the will was procured by undue influence to show that fact.

Undue Influence